**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

KIM LOCKWOOD and V. KATHLEEN LOCKWOOD,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-23-170-R
	)	
STATE FARM FIRE AND CASUALTY COMPANY,	)	
	)	
	)	
Defendant.	)	

**STATE FARM FIRE AND CASUALTY COMPANY'S
NOTICE OF CONSTITUTIONAL QUESTION**

Pursuant to Rule 5.1 of the Federal Rules of Civil Procedure, State Farm Fire and

Casualty Company ("State Farm") hereby gives notice that it filed an Answer to

Plaintiffs' Petition, questioning the constitutionality of a state statute, specifically

Oklahoma's punitive damages statute, Okla. Stat. tit. 23, § 9.1. *See* Dkt. No. 5. By their

Petition, Plaintiffs seek punitive damages. *See* Petition, Dkt. No. 1-2.

Section 9.1 is the Oklahoma statute governing the recoverability of punitive

damages. Section 9.1(B) permits the award of punitive damages for conduct in "reckless

disregard for the rights of *others*" (emphasis added). Section 9.1(C) permits the award of

punitive damages where the defendant has acted "intentionally and with malice toward

others" and allows measurement of a punitive damages award by "the increased financial

benefit derived by the defendant or insurer as a direct result of the conduct causing the

injury to the plaintiff *and other persons or entities*" (emphasis added).

In *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007), the U.S. Supreme Court held that "the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties . . . *i.e.*, injury that it inflicts upon those who are, essentially, strangers to the litigation." Section 9.1 plainly contemplates, and includes no safeguards which would prevent, the consideration of harm to others in setting the amount of a punitive award. *Moody v. Ford Motor Co.*, 506 F. Supp. 2d 823, 849 (N.D. Okla. 2007). "On its face, the statute contemplates harm to third parties as the foundation for any award of punitive damages. The Oklahoma Supreme Court has been clear that a jury should consider potential and actual harm to third parties under section 9.1." *Id.* (citing *Gilbert v. Sec. Fin. Corp. of Okla., Inc.*, 152 P.3d 165, 179 (Okla. 2006) ("If potential harm to other victims is a consideration, then *actual* harm to others is also an appropriate consideration."), *abrogated on other grounds by Montgomery v. Airbus Helicopters, Inc.*, 414 P.3d 824 (Okla. 2018).

As such, Okla. Stat. tit. 23, § 9.1 appears unconstitutional on its face. *Moody*, 506 F. Supp. 2d at 849 n.14 ("There is the possibility that section 9.1 may be facially unconstitutional.") (citing *Philip Morris*, 549 U.S. 346). Further, § 9.1 is unconstitutional as applied to the extent the jury is permitted to consider, or evidence is allowed, of harm to third parties.

Respectfully submitted,

/s/ *Timila S. Rother*
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**ATTORNEYS FOR DEFENDANT
STATE FARM FIRE AND CASUALTY
COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2023, I electronically transmitted the foregoing document to the Court Clerk using the ECF system of filing, which will transmit a Notice of Electronic Filing to the following ECF registrants:

Terry M. McKeever
S. Alex Yaffe
FOSHEE & YAFEE
P.O. Box 890420
Oklahoma City, OK 73189

/s/ *Timila S. Rother*
Timila S. Rother

I further certify that on this 7th day of April, 2023, I served this Notice and Defendant's Answer to Plaintiffs' Petition (Dkt. No. 5) pursuant to the requirements of Fed. R. Civ. P. 5.1, by electronic mail to the non-party Oklahoma Attorney General as follows:

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/s/ *Timila S. Rother*
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